***THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA**

+Writ Petition No. 33037 of 1997

%Dated 12.03.2007

Arjala Manohara Rao S/o late Kodanda Rao,
R/o Nowpada village, Santhabommali Mandal,
Srikakulam District.

… **PETITIONER**

VERSUS

$ The State of Andhra Pradesh, rep., by the
District Collector-cum-District Magistrate,
Srikakulam and others.

… **RESPONDENTS**

! Counsel for Petitioner: Sri P.Veera Reddy

^Counsel for Respondent: Government Pleader for Revenue

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? Cases referred

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.33037 of 1997

Dated : 12.03.2007

Between:

Arjala Manohara Rao S/o late Kodanda Rao

… **PETITIONER**

And:

The State of A.P., rep., by its District Collector-
cum-District Magistrate, Srikakulam and others.

….**RESPONDENTS**

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.33037 of 1997

ORDER:

This writ petition is filed seeking a declaration that the action of the respondents in issuing notice to the petitioner calling upon him to file a fresh declaration under the provisions of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act 1973 (for short "the Act") is arbitrary and illegal and for a consequential direction to the respondents not insist the petitioner to file a fresh declaration and not to take any coercive steps against him.

The case of the petitioner is that in the year 1960, the then Settlement Officer, Visakhapatnam granted ryotwari patta in respect of an extent of Acs.1115.80 cents of land in favour of his father, by name late Kondala Rao, under Section 11 of the A.P. (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948") and since then the petitioner's family has been in possession and enjoyment of the said property and they also alleged to have been paying taxes to the Government. Subsequently, after a long time the District Collector, Srikakulam, filed a revision before the Director of Settlements questioning the grant of ryotwari patta in favour of petitioner's father, but, the same was dismissed on 02.01.1971 holding that it was barred by limitation. However, on 05.02.1974, the Director of Settlements issued a notice to the father of the petitioner under Section 5(2) of the Act asking him to appear for enquiry on 23.02.1974 alleging that the patta granted in respect of the said land was without proper enquiry. Accordingly, the petitioner's father appeared and raised preliminary

objections stating that as the earlier revision filed by the Collector has been dismissed by the Director of Settlements, he had no power to take up suo motu enquiry. However, without considering the objections, the Director of Settlements passed an order on 13.06.1974 negating the contentions of the petitioner's father. Aggrieved thereby, the petitioner's father preferred a revision before the Commissioner of Survey, Settlements and Land Records, which was also dismissed by an order dated 01.06.1997. Questioning the same, the petitioner's father filed W.P.No.276 of 1977 before this Court and the same was also dismissed. Against the same, W.A.No.397 of 1978 was preferred and a Division Bench of this Court allowed the writ appeal holding that the suo motu power conferred on the Director of Settlements should be exercised within a reasonable time and that invocation of that power after 12 or 13 years is totally unreasonable and impressible. Challenging the same, the Government filed Civil Appeal No.3314 of 1981, before the Supreme Court and the same was dismissed on 13.08.1996, confirming the order of the Division Bench. Meanwhile, the petitioner's father died and the petitioner inherited the properties of his father. Subsequently, on 19.02.1997, the Land Reforms Tribunal issued a notice asking the petitioner to furnish fresh declaration and subsequently on 27.03.1997, the Joint Collector, Srikakulam, issued show cause notice stating that if the petitioner fails to file declaration within seven days, prosecution would be launched against him under Section 24 of the Act. But, the petitioner submitted a representation on 07.04.1997 requesting the authorities to grant one month time to verify the records and submit explanation. However, without considering the said representation, the first respondent passed an order dated 21.04.1997 directing the Mandal Revenue Officer, Santhibommali, to launch prosecution against the petitioner, without issuing any notice to the petitioner. Against the said order, the petitioner preferred an appeal before the Appellate Tribunal, but the same was dismissed, and questioning the same, the petitioner preferred C.R.P.No.2700 of

1997 before this Court, but the same was dismissed on the ground that the Civil Revision Petition is not maintainable and only a writ is maintainable. Hence, this writ petition.

A detailed counter is filed on behalf of the respondents stating that originally, the petitioner's mother, by name Smt.A.Chandramma, was the holder of the land in question, and the petitioner's father was only a General Power of Attorney Holder. But suppressing the said fact, the petitioner's father obtained ryotwari patta, which came to light in the year 1969 when the petitioner raised an objection for leasing of fishing rights in the land in question. Actually, the land in question is not arable and it is only saline land, which shall be used only for manufacturing salt. Hence, the same was never cultivated by any one from times immemorial. Therefore, granting of patta to the petitioner's father was not proper. As such, a revision was filed by the Government before the Director of Settlements in the year 1970, but it was rejected on 02.04.1972 on the ground that it was barred by time. But, the Director of Settlements took up suo motu enquiry to enquire into the validity of issuance of ryotari patta, and questioning the suo motu exercise of powers by the Director of Settlements, the petitioner's father carried the matter by way of revision, later filed writ petition and thereafter writ appeal, which was held in his favour. Though the Government preferred Civil Appeal, the Supreme Court also held in favour of the petitioner's father holding that suo motu powers shall not be exercised after expiry of 12 to 13 years. Meanwhile the petitioner's father died and his entire properties devolved upon the petitioner. Hence, it is mandatory on the part of the petitioner to file declaration before the Land Reforms Tribunal under Section 18(1) of the Act in respect of the acquired land. Accordingly, a notice in Form III was issued on the petitioner on 19.02.1997 directing him to file declaration. As he did not file the same, a show cause notice was issued to him on 27.03.1997. Instead of filing the declaration, the petitioner requested

the Collector to grant one month time to file his declaration. However, as sufficient time was already granted to the petitioner and as it was only to delay the filing of declaration the representation was made, the first respondent rejected his representation and passed orders on 21.04.1997 directing to launch prosecution against the petitioner. Since the earlier dispute was with regard to the validity of exercising suo mutu revisional powers by the Director of Settlements, but not with regard to the issue as to whether the petitioner has to file a declaration or not, petitioner was directed to file a fresh declaration. It is concluded that the petitioner cannot question the order of the first respondent in directing to launch prosecution, inasmuch as the Courts have no jurisdiction to entertain the same without obtaining sanction from the Collector. Therefore, the writ petition is liable to be dismissed.

Heard the learned counsel for the petitioner and the learned Government Pleader for Revenue.

Having regard to the fact that this Court as well as the Apex Court held in favour of the petitioner/his father, at this juncture, it not necessary to go into those aspects. The only question that falls for consideration is as to whether the first respondent is justified in issuing a notice directing the petitioner to offer his explanation or file a fresh declaration under Section 18 of the Act, and initiating prosecution on account of the petitioner's failure in filing a fresh declaration. Of course, it is the contention of the learned counsel for the petitioner that the land, which was devolved on the petitioner consequent upon the death of his father and also as per the observation of the Supreme Court in the Civil Appeal, would not come within the meaning of future acquisition, as defined under Section 18 of the Act. It s also his contention that though the petitioner/his father filed a declaration including the land in question in his holding, the Land Reforms Tribunal on its own excluded these lands from computation on the ground that the dispute with regard to title was pending between the

Government and the petitioner's father, and if the authorities want to take these lands also into consideration, it is always open for them to take the very same declaration filed by the petitioner's father in the year 1975 into consideration and decide as to what is the excess holding. In this context, it is relevant to extract Section 18 of the Act, and it is thus:

> "Where on or after the notified date there takes place-
>
> (a) any acquisition in any manner whatsoever, usufructuary mortgage, or lease of any land; or
>
> (b) any marriage or adoption; or
>
> (c) any alteration in the classification of the land;
>
> and after such acquisition, usufructuary mortgage, lease, marriage adoption or alteration, the total extent of land held by any person or by all the members of any family unit in the aggregate exceeds the ceiling area such person or family unit shall within a period of sixty days from the date of such acquisition, usufructuary mortgage, lease, marriage adoption or alteration furnish a declaration of the holding of such person or family unit; and all the relevant provisions of this Act shall apply as if it was a declaration furnished under Section 8.

From the above provision of law, it is clear that a person is under obligation to file a declaration if there is any future acquisition subsequent to the notified date. It is only in those cases, which are mentioned in Section 18 of the Act, the Collector may direct the person concerned to file fresh declaration, but not in case of this nature. From a narration of events, it is clear that the petitioner and his father are in possession of the lands in question even by the time the declaration was filed in the year 1975. But, as there is a dispute with regard to the ryotwari patta granted in favour of the petitioner's father, the said land could not be taken into consideration for deciding the excess holding of the family of the petitioner. Simply because it was held by the Apex

Court as well as this Court that suo motu powers cannot be exercised, it cannot be said that the said land is a future acquisition, requiring fresh declaration under Section 18(1) of the Act. It is not as though the petitioner's father has not made any mention about the land in question in his declaration. As stated supra, it was the Land Reforms Tribunal, which has excluded this land from out of the holding of the petitioner's father. In my considered view, after the dismissal of the Civil Appeal by the Supreme Court on 13.08.1996, instead of directing the petitioner to file a fresh declaration as provided under Section 18 of the Act, the first respondent ought to have ordered fresh enquiry into the matter. In fact, Sub-Rule (5)(b) of Rule 16 of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Rules, 1974 (for short "the Rules") gives an indication that if there is any mistake either on account of the accidental slip or omission, the authorities mentioned therein shall have the power to correct the said errors. Thus, instead of insisting the petitioner to file a declaration under Section 18 of the Act, and resorting to take action under Section 24 for non-filing of such declaration, the first respondent ought have exercised his powers under Sub-Rule 5(a) of Rule 16 of the Rules.

Accordingly, the writ petition is allowed and the proceedings of the first respondent dated 21.04.1997 directing the third respondent to launch prosecution against the petitioner are hereby quashed. However, the first respondent is given liberty to reopen LCC 670/TKL/75 and determine as to what is the excess holding of the petitioner, duly including the land in question. There shall be no order as to costs.

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12.03.2007

Note: L.R.Copy to be marked.

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